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11  
12 **UNITED STATES DISTRICT COURT**  
13 **EASTERN DISTRICT OF CALIFORNIA**  
14

15 B&G FOOD NORTH AMERICA, INC.,

16 Plaintiff,

17 v.

18 KIM EMBRY and ENVIRONMENTAL  
19 HEALTH ADVOCATES, INC., acting as  
20 enforcement representatives under California  
Proposition 65 on behalf of the State of  
California,

21 Defendants.  
22

**Case No. 2:20-cv-00526-KJM-DB**

**PLAINTIFF B&G FOODS NORTH  
AMERICA, INC.'S STATEMENT  
REGARDING ORAL ARGUMENT**

Date: March 10, 2023  
Time: 10:00 a.m.  
Judge: Hon. Kimberly J. Mueller  
Courtroom: 3

SAC Filed: November 23, 2022  
Trial Date: None Set

At oral argument today, the Court inquired whether the State of California has ever litigated a Prop 65 case along with a private enforcer. It has. B&G Foods respectfully submits this statement to identify several cases in which that has occurred:

- *People ex rel. Brown v. Tri-Union Seafoods, LLC*, S.F. Super. Ct. No. CGC-04-432394; related case: *Public Media Ctr. v. Tri-Union Seafoods, LLC*, S.F. Super. Ct. No. CGC-01-402975 (Attorney General co-litigated Prop 65 case with private enforcer regarding mercury in tuna). This matter was litigated successfully by B&G Foods's counsel Forrest Hainline. A copy of the Court of Appeal's final decision is attached as Exhibit 1.
- *People v. Dakota Bros.*, Alameda Super. Ct No. CGC-13-531045, related cases: *Center for Environmental Health v. Food Market Mgmt., Inc.*, Alameda Super. Ct. No. CGC-12-526395; *Center for Environmental Health v. Fayeon Distributors, Inc.*, Alameda Super. Ct. No. CGC-12-526396 (Attorney General co-litigated Prop 65 case with private enforcer regarding lead in ginger). A copy of the Consent Judgment is attached as Exhibit 2.
- *People v. Burlington Coat Factory Warehouse Corp.*, Alameda Super. Ct. No. RG 04-162075 (Attorney General filed suit based on initial investigation conducted by private enforcer regarding lead in jewelry; in subsequent consent judgment, fees were awarded to private enforcer). A copy of the Consent Judgment is attached as Exhibit 3.
- *People v. PepsiCo, Inc.*, L.A. Super. Ct. BC351120 (Attorney General filed action based on investigation of private enforcer regarding lead in soda; in subsequent consent judgment, fees were awarded to private enforcer). A copy of the Consent Judgment is attached as Exhibit 4.

Dated: March 10, 2023

Respectfully submitted,

BRAUNHAGEY & BORDEN LLP

By: /s/David H. Kwasniewski

David H. Kwasniewski

*Attorneys for Plaintiff*

*B&G Foods North America, Inc.*